

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MEDTECH PRODUCTS INC.,  
90 North Broadway  
Irvington, New York 10533

Plaintiff,

v.

POWER PRODUCTS, INC.  
d/b/a SPLINTEK,  
3325 Wyoming Street  
Kansas City, Missouri 64111

Defendant.

Civil Action No. 07 CV 3305 (SCR)

**DECLARATION OF AMY S. MANNING, ESQ.**

I, Amy S. Manning, pursuant to 28 U.S.C. § 1746, declare and say as follows:

1. My name is Amy S. Manning. I am an attorney in the New York, New York Office of Alston & Bird LLP. I have personal knowledge of the facts and circumstances discussed herein. I submit this declaration in support of Medtech's Motion for a Preliminary Injunction.

2. At the time this lawsuit was filed, the Power Products website at [www.sleepright.com](http://www.sleepright.com) listed ten (10) retail locations where its dental protector was available, including in New York. A true and correct copy of the Power Products listing of retail stores in New York, as found on [www.sleepright.com](http://www.sleepright.com) on April 24, 2007, is attached hereto as Exhibit 1.

3. After this lawsuit was filed, Power Products began selling its product at Target retail stores, including stores in New York. A true and correct copy of Power Products' listing

of retail stores in New York, as found on [www.sleepright.com](http://www.sleepright.com) on May 16, 2007, is attached hereto as Exhibit 2.

4. On the Power Products website ([www.sleepright.com](http://www.sleepright.com)), Power Products has set up a "Customer Posts" segment, which directs the Internet user to a "SPLINTEK® Community Forum." Included on the site are several posts from Power Products "Community Moderators." A true and correct copy of several Community Moderator posts, as found on [www.sleepright.com](http://www.sleepright.com), is attached hereto as Exhibit 3. A true and correct copy of certain customer postings from the Power Products' Community Forum, as found on [www.sleepright.com](http://www.sleepright.com), are attached hereto as Exhibit 4.

5. On the Power Products website ([www.sleepright.com](http://www.sleepright.com)), Power Products has set up a "Frequently Asked Questions" section. A true and correct copy of the Frequently Asked Questions section, as found on [www.sleepright.com](http://www.sleepright.com), is attached hereto as Exhibit 5.

6. On the Power Products website ([www.sleepright.com](http://www.sleepright.com)), Power Products includes certain warnings and disclaimers. A true and correct copy of Power Products' warnings and disclaimers, as found on [www.sleepright.com](http://www.sleepright.com), is attached hereto as Exhibit 6.

7. The United States Patent and Trademark website ([www.uspto.gov](http://www.uspto.gov)) includes the Power Products application for its SPLINTEK™ mark, which is dated September 4, 1998. A true and correct copy of the SPLINTEK™ trademark information, as found on [www.uspto.gov](http://www.uspto.gov), is attached hereto as Exhibit 7.

8. A true and correct copy of the Power Products listing of retail stores in California, as found on [www.sleepright.com](http://www.sleepright.com) on April 24, 2007, is attached hereto as Exhibit 8.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS  
TRUE AND CORRECT.

DATED THIS 23 DAY OF MAY, 2007.

  
AMY S. MANNING